

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

SEAN M. YOUNG,

Plaintiff,

v.

SCULLION, BEN TIERNEY, SHAUN FUNK,
KEITH WIEGEL, SHAWN GALLINGER, FEDIE JR.,
KIMBERLY FINNELL and MARLESHA FISHNICK,

Defendants.

ORDER

20-cv-359-bbc

Pro se plaintiff Sean M. Young, who is incarcerated at Wisconsin Secure Program Facility, is proceeding on Eighth Amendment claims that defendant Keith Wiegel sexually assaulted him during a strip search on December 4, 2019, and that defendants Scullion, Shaun Funk, Ben Tierney, Fedie, Kimberly Finnell, Marlesha Fishnick and Shawn Gallinger failed to intervene to stop the assault. Before the court is plaintiff's motion to amend his complaint to add Lebbeus Brown as a defendant. Dkt. #10.

Plaintiff points out that he alleged in his in his original complaint, dkt. #1 at ¶ 61, that Brown (whom he had mistakenly referred to as "Larry" Brown) was also present during the alleged assault and failed to intervene to stop it, but that I overlooked that allegation in screening his complaint on June 16, 2020. Plaintiff is correct. Therefore, for the same reasons explained in my previous order, I find that plaintiff's allegations against Lebbeus Brown are sufficient to state a failure to intervene claim against Brown under the Eighth Amendment.

Because plaintiff's complaint contains all of the relevant allegations against Brown, it is not necessary for plaintiff to file an amended complaint to serve as the operative pleading in this case. I will amend the screening order to allow plaintiff to proceed on an Eighth Amendment claim against Lebbeus Brown, who will be added as a defendant in this case.

ORDER

IT IS ORDERED that

1. Plaintiff Sean Young's motion to amend the screening order, dkt. #10, is DENIED as unnecessary. Plaintiff's original complaint, dkt. #1, remains the operative pleading in this case.

2. The screening ordered entered on June 16, 2020, dkt. # 9, is AMENDED to add Lebbeus Brown as a defendant and grant plaintiff leave to proceed on a claim that defendant Brown failed to intervene to stop an alleged sexual assault of plaintiff during a strip search on December 4, 2019, in violation of the Eighth Amendment.

Entered this 29th day of June, 2020.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge